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ABSTRACT

This examination of the interim alternative educational setting for the school discipline of students with disabilities focuses on the legal requirements and their application under the Individuals with Disabilities Education Act as amended in 1997. Following an introductory background chapter, the concept of interim alternative educational setting is defined and put in the context of IDEA and prior court cases. The next chapter considers assignment decisions and criteria for placement in the alternative setting including: who decides when to use an interim alternative setting; who determines the nature of such a setting; how long a student may be in an interim setting; criteria for an interim alternative educational setting; relationship to other programs for students who are suspended or expelled; connections to existing alternative schools or programs; other options for creating interim alternative educational settings; and changes in placement. The final section addresses such additional issues as the development of case law on interim settings, the lack of research on interim settings, research on alternative settings generally, and the funding of interim alternative settings. (Contains 25 references.) (DB)



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Dealing with Behaviors Perceived as Unacceptable in Schools

The Interim Alternative Educational
Setting Solution

Reece L. Peterson
Carl R. Smith



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Dealing with Behaviors Perceived as Unacceptable in Schools

The Interim Alternative Educational
Setting Solution

Rebecca L. Peterson
and Susan M. Nelson, Editors

Carl R. Smith,
Editor Emeritus



Council for
Children with
Behavioral
Disorders

Lyndal M. Bullock & Robert A. Gable, *Series Editors*

The Council for Children with Behavioral Disorders, *Publisher*

About the Council for Children with Behavioral Disorders



Council for
Children with
Behavioral
Disorders

CCBD is an international and professional organization committed to promoting and facilitating the education and general welfare of children and youth with behavioral and emotional disorders. CCBD, whose members include educators, parents, mental health personnel, and a variety of other professionals, actively pursues quality educational services and program alternatives for persons with behavioral disorders, advocates for the needs of such children and youth, emphasizes research and professional growth as vehicles for better understanding behavioral disorders, and provides professional support for persons who are involved with and serve children and youth with behavioral disorders.

In advocating for the professionals in the field of behavioral disorders, CCBD (a division of The Council for Exceptional Children) endorses the Standards for Professional Practice and Code of Ethics adopted by the Delegate Assembly of The Council for Exceptional Children in 1983.

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Contents

Foreword	v
1. Introduction	1
Background	2
2. Definitions	5
Language of the Law	5
Defining <i>Interim Alternative Educational Setting</i>	8
3. Assignment Decisions and Criteria for Placement	13
Who Decides When to Use an Interim Setting?	13
Who Determines the Nature of an Interim Alternative Setting?	13
How Long Will a Student Be in an Interim Alternative Setting?	14
Criteria for an Interim Alternative Educational Setting	15
Relationship to Other Programs for Students	
Who Are Suspended or Expelled	17
Connections to Existing Alternative Schools or Programs	18
Other Options for Creating Interim Alternative Educational Settings	20
Changes in Placement	20
4. Other Issues	23
Developing Case Law on Interim Settings	23
Lack of Research on Interim Settings	24

Research on Alternative Settings Generally	25
Funding of Interim Alternative Settings	29
5. Conclusion	31
References	33

Foreword

In schools across the country, we are witnessing significant demographic changes in the student population. Data show that there is an increasing number of students from culturally and linguistically diverse backgrounds in both general and special education. The longstanding debate over what is special about special education has been rekindled as school personnel struggle to ensure that a heterogeneous population of students receives high-quality instruction. The challenges are many and varied. Concerns about misidentification may have surpassed those of underidentification—especially when we simultaneously look at the numbers that relate to diversity and disability. Diversity is an issue not only in regard to overrepresentation and underrepresentation of students in various disability groups, but also in regard to the delivery of high-quality instruction. There are those who would argue that a limited body of empirical research poorly informs current teacher preparation and classroom practices. Others assert that students who are variously labeled as *emotionally disturbed*, *behaviorally handicapped*, or *emotionally or behaviorally disordered* are especially susceptible to inappropriate placement and ineffective practices. It is difficult to refute these assertions.

Most education professionals recognize that we must view these challenges as opportunities as well. We must forthrightly address the complex issues surrounding cultural competency, parent involvement in education, high-quality academic and nonacademic intervention, and the judicious use of emergent technology. We also recognize that we cannot afford to ignore the special challenges of serving students with emotional or behavioral disorders placed in

interim alternative educational settings or correctional facilities. Rapidly changing social, philosophical, political, and economic forces compel us to examine current policies and practices critically and to repudiate any that do not serve all our students well.

The following books comprise the Fourth CCBBD Mini-Library Series: Addressing the Diverse Needs of Children and Youth with Emotional/Behavioral Disorders: Programs That Work, which derived from the 2001 international conference sponsored by the Council for Children with Behavioral Disorders:

- *Addressing the Issue of Disproportionate Representation: Identification and Assessment of Culturally Diverse Students with Emotional or Behavioral Disorders* by Festus Obiakor, Bob Algozzine, Martha Thurlow, Nomsa Gwalla-Ogisi, Stephen Enwefa, Regina Enwefa, and Angela McIntosh
- *The Challenges of Gangs and Youth Violence in the Schools* by Sharon H. Grant and Richard Van Acker
- *Culturally and Linguistically Diverse Learners with Behavioral Disorders* by Gwendolyn Cartledge, Kai Yung (Brian) Tam, Scott A. Loe, Antoinette H. Miranda, Michael Charles Lambert, Cathy D. Kea, and Evette Simmons-Reed
- *Dealing with Behaviors Perceived as Unacceptable in Schools: The Interim Alternative Educational Setting Solution* by Reece L. Peterson and Carl R. Smith
- *Education, Disability, and Juvenile Justice: Recommended Practices* by Robert B. Rutherford, Mary Magee Quinn, Peter E. Leone, Lili Garfinkle, and C. Michael Nelson
- *Integrating Technology in Program Development for Children and Youth with Emotional or Behavioral Disorders*, edited by Lynn K. Wilder and Sharon Black
- *Strategies and Procedures for Designing Proactive Interventions with a Culturally Diverse Population of Students with Emotional or Behavioral Disorders and Their Families/Caregivers* by Gloria D. Campbell-Whatley and Ralph Gardener, III

As series editors, we solicited members of the Council for Children with Behavioral Disorders from across the country to share their thoughts on a range of critical issues regarding students with emotional or behavioral disorders. We are indebted to our colleagues who have so generously given both their time and expertise to making this mini-library possible. We trust that their efforts will contribute to your success and the success of the students with whom you work.

Lynda M. Bullock
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Introduction

1

When the Amendments to the Individuals with Disabilities Act of 1997 (IDEA '97) were passed, a variety of issues were included having to do with school discipline procedures for students with disabilities. Many simply placed in statute concepts developed in case law over the preceding 20 to 25 years. However, there were some relatively new concepts in this section of the law as well. One of those is the concept of an "interim alternative educational setting." This component was designed to provide some added flexibility for schools in dealing with students who brought weapons or drugs to school or who were potentially dangerous to themselves or others.

The concept of an interim alternative educational setting was first introduced in the Gun-Free Schools Act of 1994. As described in a publication of the National Association of State Directors of Special Education (Project FORUM, 1998):

The Jeffords Amendment allowed educators to move a student with a disability who brought a gun or other firearm to school to an "alternative educational placement" for up to 45 days. During this time period, parents could request a due process hearing to challenge the alternative educational placement; however, the student must remain in the alternative setting until completion of the hearing process. This was the first statu-

Note: The authors approach this overall topic with a greater than usual and uncharacteristic timidity. At the time this was written, Congress was in the process of amending the Elementary and Secondary Education Act, including proposed amendments to IDEA. Readers should view the following in light of the fact that changes may be made. We hope that other material, particularly that focusing on professional practices, will be useful, regardless of the eventual wording and expectations of IDEA.

tory appearance of the phrase "alternative educational placement" in regard to disciplining students with disabilities. (p. 1)

In this Mini-Library book, we provide an overview of interim alternative educational settings as they relate to school discipline of students with disabilities, with a particular focus on the concepts introduced in IDEA '97. We define this concept and the terms used in the phrase and put it in the context of the federal law and prior court cases. We also discuss how the law specifies that these settings be set up and employed for specific students and the criteria that the law requires for these settings. Finally, we examine other issues that relate to these settings, including other state and local requirements, the nature of the empirical support for these settings, and connections to other alternative schools or programs.

Background

The IDEA amendments reaffirmed many earlier court decisions that provided that students with disabilities must continue to be afforded appropriate education in spite of disciplinary action that would have resulted in long-term suspension or expulsion for students without disabilities. This requirement that schools continue to provide educational services to students with disabilities is based on the free appropriate public education, or FAPE, clause in that law, which was intended to guarantee that appropriate educational services were provided to all students with disabilities. Prior court cases such as *Mills v. Board of Education* (1972) had found that schools could not use disciplinary action as a means for denying public education to students with disabilities. In 1988, the U.S. Supreme Court, in *Honig v. Doe*, affirmed the "stay put" provision developed in earlier court cases. That provision required schools to maintain a child in his or her current special education placement regardless of any disciplinary action until the child's individualized education program (IEP) team made a determination of whether the current placement was appropriate, or during any due process hearings or procedures that might occur related to the student's placement. If

the current placement was found to be appropriate, that placement could not be changed based on disciplinary actions.

While this provision prevented the abuse of disciplinary action as related to students with disabilities, it also created consternation among school officials. Many officials voiced concern about the perception that these requirements created a double standard of discipline—one for students with disabilities and one for other students. Moreover, officials felt that some students might become too dangerous to be maintained effectively in their present educational placement, thus causing a potential harm to those or other students or staff in that environment. As a result, the reauthorization of IDEA in 1997 involved long and intense negotiations between those concerned about maintaining FAPE for all students with disabilities and those concerned about permitting flexibility in moving students out of a building when their behavior was disruptive.

At that time, a tenuous compromise was reached that added new language to IDEA permitting school officials or hearing officers to move students to other environments for a temporary period of time under very specific circumstances. In the compromise, modeled after the earlier Jeffords Amendment to the Elementary and Secondary Education Act, students who were found with weapons or drugs in school could be assigned by school personnel to an interim alternative educational setting for a period of up to 45 days. Similarly, the language provided that a hearing officer could assign a student with disabilities to one of these settings if school officials could convince the hearing officer that the student was dangerous to self or others.

Definitions

2

Language of the Law

The section of IDEA '97 that includes the phrase "interim alternative educational settings" is as follows:

(j) Maintenance of Current Educational Placement.—

Except as provided in subsection (k)(7), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

(k) Placement in Alternative Educational Setting.—

(1) Authority of school personnel.—

(A) School personnel under this section may order a change in the placement of a child with a disability—

(i) to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives would be applied to children without disabilities); and

(ii) to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days if—

(I) the child carries a weapon to school or to a school function under the jurisdiction of a State or a local educational agency; or

-
- (II) the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency.
- (B) Either before or not later than 10 days after taking a disciplinary action described in subparagraph (A)—
- (i) if the local educational agency did not conduct a functional behavioral assessment and implement a behavioral intervention plan for such child before the behavior that resulted in the suspension described in subparagraph (A), the agency shall convene an IEP meeting to develop an assessment plan to address that behavior; or
 - (ii) if the child already has a behavioral intervention plan, the IEP Team shall review the plan and modify it, as necessary, to address the behavior.
- (2) **Authority of hearing officer.**— A hearing officer under this section may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer—
- (A) determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others;
 - (B) considers the appropriateness of the child's current placement;
 - (C) considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
 - (D) determines that the interim alternative educational setting meets the requirements of paragraph (3)(B).
- (3) **Determination of setting.**—
- (A) In general.—The alternative educational setting described in paragraph (1)(A)(ii) shall be determined by the IEP Team.
 - (B) Additional requirements.—Any interim alternative educational setting in which a child is placed under paragraph (1) or (2) shall—

-
- (i) be selected so as to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and
 - (ii) include services and modifications designed to address the behavior described in paragraph (1) or paragraph (2) so that it does not recur.

The next sections of IDEA '97, Sections (4) to (6), address the "Manifestation determination review" (Section 4), "Determination that behavior was not manifestation of disability" (Section 5) and "Parent appeals" (Section 6). It is beyond the scope of our discussion to analyze these sections, but the section on "Placement during appeals" (Section 7) also mentions interim settings. It reads as follows:

(7) Placement during appeals.—

- (A) In general.—When a parent requests a hearing regarding a disciplinary action described in paragraph (1)(A)(ii) or paragraph (2) to challenge the interim alternative educational setting or the manifestation determination, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(A)(ii) or paragraph (2), whichever occurs first, unless the parent and the State or local educational agency agree otherwise.
- (B) Current placement.—If a child is placed in an interim alternative educational setting pursuant to paragraph (1)(A)(ii) or paragraph (2) and school personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement, the child shall remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided in subparagraph (C).

(C) Expedited hearing.—

- (i) If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the local educational agency may request an expedited hearing.
- (ii) In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards set out in paragraph (2).

Defining *Interim Alternative Educational Setting*

IDEA '97 provides no federal definition for the phrase "interim alternative educational setting" beyond the words included in the law itself as quoted in the previous section. We were unable to find any prior reference to this phrase in previous court decisions or policy. While the concept may have been used before, the words *interim alternative educational setting* were not used earlier.

It would appear that this concept was created during the drafting of IDEA '97. Other phrases in the discipline sections of IDEA '97, such as "manifestation determination," had been taken directly from case law and had been interpreted by the courts over the years. The phrase "functional behavioral assessment" had also received fairly extensive use previously in the professional literature.

A search of the IDEA '97 Federal Regulations failed to yield further clarification or definition of this phrase. The language in the regulations generally mimicked the statute itself, without providing further insight into the intended meaning or definition of the phrase. The regulations did clarify that parents of students who are eligible for placement in an interim alternative educational setting be provided with a copy of procedural safeguards (IDEA Regulations, Section 300.504 (b) (7)).

As a result, the law and regulations provide little guidance in interpreting what was intended in the phrase. While there are some criteria for these settings (discussed in a later section of this monograph), there is not much direct guidance provided. This suggests that there may be considerable latitude in setting up these settings for individual students. One way to approach a more detailed explanation is to address the potential meanings of the individual words in the phrase.

Setting

Although the law and its regulations provide little explanation about what is meant by the word *setting* directly, some guidance may lie in the word itself. The word *setting* suggests a scene or environment. It appears to emphasize the physical location. It does not address the structure or organization of that environment.

The choice of the term *setting* may be significant in terms of the words that were *not* chosen. The terms *program* and *placement* were not employed. We might typically think of a program as a preestablished organizational unit, with an existing set of criteria related to the types of students served, the general goals to be addressed, the nature of the interventions to be used to achieve those goals, and criteria for completion or termination of that program. Accordingly, it may be especially meaningful that the term *program* was not employed. While not precluded by the language of the law, assignment of a student to a program apparently was not what was intended, given that this word was not used for this purpose even though IDEA '97 used it in other contexts. Another reason the term may not have been used was to keep the concept of interim alternative educational settings distinct from the use of the term *program* in the phrase *individualized education program (IEP)*, which had been used in IDEA from the very beginning.

Likewise, the term *placement* was not employed, even though that term had been used in the *Honig v. Doe* case, which had established the "stay put" provision in case law that required schools to maintain students in their current placement until the IEP team made a decision to change that placement. In the context of special educa-

tion, a *placement* is the type and mixture of educational programs to which a child is assigned in his or her IEP. This may include, for example, some general education classes and a certain amount of time in a special education resource program, along with time allocated to specialty services provided to the student. Overall, this package of service and resource assignments, along with the allocation of time among them, has become known as the *placement*. In this sense, an interim alternative setting is a placement. The IDEA Regulations do use the phrase "interim alternative placement" at one point (Section 300.526 (b)), suggesting perhaps that the term *placement* is closer to what is meant by setting in this section.

As a result of the nonuse of the term *program*, there would seem to be an implication that the setting is one that is created on an ad hoc basis. Apparently, settings might be different for each student needing an interim alternative educational setting. While an interim alternative setting might be in a program, it would not necessarily require that; instead, it could be in a physical location, or setting, with the program being defined by the student's IEP, and other features of the environment to meet the goals of that student's IEP. The language of the law and regulations seems to support this approach.

Interim

The word *interim* suggests that this setting would be one of short duration and that it would be temporary while other processes were taking place or more permanent decisions were being made. The law specifies that these settings be used for "up to" 45 days, depending on the length of time that a student without disabilities would be subjected to disciplinary action under similar circumstances. It should also be noted that a student's placement into such a setting can be extended through order of a hearing officer or administrative law judge. Another implication of the word *interim* is that this environment may be used between other, more permanent, placements, presumably the old preexisting placement and a newer one to be determined while the child is in the interim setting.

Alternative

The choice of the word *alternative* seems to imply that the new alternative setting is one that is different from the current setting. The concern in situations in which weapons, drugs, or dangerous behavior are factors is to remove the students from the current school environment. Thus, it also may imply that multiple alternative settings are possible, with one chosen or created for this particular student. As we will discuss later, the term *alternative* also suggests a possible connection between these interim settings and other alternative programs that may be available such as alternative schools, self-contained classes, day or residential treatment centers, or work-study arrangements.

Educational

The term *educational* suggests that the purpose of the setting is educational. In fact, IDEA '97 later goes on to describe specific criteria for interim alternative educational settings. It requires certain kinds of educational activities to take place (which we describe later in this monograph). Clearly, by calling these settings "educational," the law suggests that the purpose is not merely punitive, nor is it merely to isolate, or to "hold" or "maintain" students assigned to these settings.

3

Assignment Decisions and Criteria for Placement

Who Decides When to Use an Interim Alternative Setting?

The law specifically states that school personnel have discretion to make decisions to place students with disabilities in interim settings when students have guns or drugs in school. However, there is no clear explanation regarding which school personnel might make these decisions. While most have presumed that the law is referring to school administrators, it is ambiguous whether special education teachers or others who are knowledgeable regarding students with disabilities are to be involved. While a hearing officer may make the decision to place a youngster in one of these settings in the case of behavior that is viewed to be dangerous to the child or others in his or her environment, it is not clear whether the hearing officer will know the nature of the setting.

Who Determines the Nature of an Interim Alternative Setting?

While it is either school personnel or the hearing officer who decides whether a student with disabilities will be assigned to an interim

alternative educational setting, it is the student's IEP team that has the responsibility of defining the nature of the specific interim alternative educational setting to which that student will be assigned (*Independent School District No. 279, Osseo Area Schools, 1999*).

Other than the criteria described in the law itself (discussed later), there is nothing to suggest how to create an interim setting, nor is there any guidance related to the process for creating it. While in some cases the language of the law seems almost to suggest that an interim educational setting for a child might have been predetermined in advance by the IEP team, that would seem unlikely in that it would itself be a prediction that this student would become involved in the discipline system. Creating such settings for all students with disabilities would also be impractical.

On the other hand, when a student faces suspension or expulsion on account of the behaviors identified in the law, it would appear that little time would exist for the IEP team to meet; devise a plan for an interim alternative educational setting that meets criteria; and prepare, create, or implement that setting. This poses some serious questions about the practical issues related to creating effective interim settings that meet legal requirements.

How Long Will a Student Be in an Interim Alternative Setting?

Most readers have inferred that an interim alternative educational setting is applicable only when a student is being considered for long-term suspension (i.e., once the 10 days have been exhausted) or when a student is being considered for expulsion. However, the language of the law clearly permits such a setting to be used from the very beginning of any disciplinary action in lieu of suspension.

While a common shortcut of educators may be to assume that this assignment would be for 45 days, the law is clear that the time depends on the equivalent time of suspension or expulsion that would be in accord with district policies and procedures for students

without disabilities. For example, if a student without disabilities had been suspended for 15 school days for bringing a small knife to school, that would also be the maximum for the assignment for a child with disabilities to an interim alternative educational setting. While in many cases this issue would be moot for most weapons or drug offenses, it could limit these placements in some situations.

Although a hearing officer may place a student in an interim alternative educational setting for up to 45 days, in this specific situation there has not necessarily been a violation of a school's code of conduct. The student is being placed in this setting because the hearing officer has determined that there is a risk of harm if the student is maintained in the current setting. There is no comparable situation in which students without disabilities might be placed in such a setting, other than perhaps through a court order. As a result, there is no comparable amount of time for students without disabilities. Presumably, the hearing officer could set a time parameter of less than the 45-day maximum.

Criteria for an Interim Alternative Educational Setting

IDEA '97 provides three criteria that must be met in any interim alternative educational setting used under its provisions:

- A. ... (i) be selected so as to enable the child to continue to participate in the general curriculum, although in another setting,
- B. ... and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and
- C. (ii) include services and modifications designed to address the behavior described in paragraph (1) or paragraph (2) so that it does not recur.

The first of these criteria suggests that the child should not be provided an alternative curriculum as a result of this new alternative

setting. Instead, the child should be provided a curriculum that fits the general curriculum provided to other students in the school and which is presumably similar to the curriculum in the setting from which the child will be moving. This phrase is consistent with earlier sections of IDEA '97 that have encouraged the involvement of students with disabilities in the general curriculum and curriculum standards assessment of the school. It also may mean that work completed by the student in this interim setting should be accepted toward credits the child might need for graduation. It is also in line with efforts throughout IDEA to bring about integration and inclusion of students with disabilities as much as possible.

It is clear that the intent of IDEA '97 is to permit a student to continue to make progress on IEP goals. Although this may be possible in many cases, this section may require further elaboration. It is not clear whether this requires progress on all of a student's IEP goals. For example, many students may have socialization goals on their IEPs. These goals may have to do with learning and applying skills in getting along with others, communicating with peers without disabilities, and so on. These goals would seem impossible in most alternative settings. Similarly, some special programs, such as industrial arts programs, may require equipment and supervision that are not available in other settings. As a result, it is difficult to know how to interpret this section. A common-sense approach suggests that as long as most of the student's IEP goals are being addressed in a particular interim alternative educational setting, the setting should be acceptable. Moreover, the reasons for the interim setting are to separate the student from other students, either because of a desire to be consistent with school discipline codes or to provide a safer environment. It seems logical that these issues would outweigh the concerns for at least some IEP goals. This question has already become a matter for courts to interpret (Smith, 2000), with many interim settings apparently not meeting this standard, even in a very minimal, basic way. However, the precise determination of exactly how many of the student's IEP goals must be addressed in the interim setting may be a matter that will ultimately be decided by future court interpretation as well.

Clearly, IDEA '97 requires that a part of the interim setting be designed to address and change the behavior pattern that has resulted in the involvement with the school discipline system. This section seems to support other parts of the statute that promote the idea of identifying inappropriate student behavior, conducting a functional analysis for that behavior, and then developing an intervention or "change" plan that will result in improved behavior. Beyond these criteria, there is a wide range of options open for these settings. They might be public or private ("Alternative schools—Hope or heartache?" 1998), group or totally individualized, within or outside of the district, highly structured or informal, related to a preexisting program or created ad hoc. It appears that this flexibility may have been intentional, to permit districts latitude in determining how to implement these provisions.

Relationship to Other Programs for Students Who Are Suspended or Expelled

Approximately one-half of all of the states now require some kind of continued educational option for students who are suspended long term or expelled. Although the structures vary considerably across states, each is intended to promote continued educational progress for students who have been suspended or expelled from typical school settings. These structures often are designed to maintain educational progress for students who may otherwise drop out of school. They may also stem from concern that these students, if they drop out, will pose problems for police, businesses, and other community agencies. Not surprisingly, community business and police groups have strongly advocated for alternative educational programs.

It may be useful to discuss briefly several state responses to the IDEA provision that addresses alternative programs. Several years ago, a state law was passed requiring schools in Nebraska to offer an "alternative school, class, or educational program" for expelled

students (Nebraska Department of Education Rule 17, 1997). Considerable latitude was offered regarding the nature of this alternative educational program in part because of the varying needs and resources of rural and urban school districts. The Nebraska Regulations require that school districts have these programs available, that policies on their use be in place, and that the options be offered to students and their parents when students are expelled or suspended long term.

The state of Texas also has a detailed statute and policies related to alternative educational settings that require schools to provide these programs for students who violate certain codes of conduct and offer discretionary removal for some other students who exhibit chronic behavior problems in the classroom (Bickerstaff, Leon, & Hudson, 1997). Other states are in the process of establishing their own requirements, which vary from very informal to highly structured.

Connections to Existing Alternative Schools or Programs

Whether intentional or not, the use of the word *alternative* has led to a consideration of whether preexisting alternative programs meet the requirements for interim alternative educational settings as spelled out in the law. In examining this issue, we will describe three different types of alternative programs, although there may be others as well ("Alternative schools—Hope or heartache?" 1998; Bear, 1999; Gregg, 1998). Some of the programs described here may actually represent a combination of these and other types of programs.

Traditional Alternative Programs

Traditional alternative programs typically are programs that have been run by many schools—often for a long period of time—and are designed primarily to serve students who have dropped out, are considering dropping out, or are at risk of dropping out of school. Some programs, primarily for high school-aged students, also serve students who are pregnant or have a history of drug or alcohol abuse.

Often, the students in these programs are, for various reasons, highly motivated to complete their high school education through completion of either the high school diploma (if offered through the program) or a general equivalency diploma (GED).

Since most or all of these students are attending classes on a voluntary basis and demand for the classes can be high, some of these programs have extremely high student expectations for participation and behavior. Such programs are just as likely as typical schools to suspend or expel students (or simply drop them from class rolls). Participation is typically voluntary for students who had previously dropped out of school and have voluntarily chosen this option to complete their schooling.

School-Within-School Programs

School-within-school or other alternative programs for students who are not successful—academically or socially—within the typical school environment are offered most typically in middle (junior high) and high school. These programs tend to reflect a more structured school environment tailored to the academic needs of struggling students. They can either be located on the grounds of the traditional school or at alternative sites. Student participation in these programs is often required, according to established referral criteria.

Discipline Schools or Programs

As noted earlier, many states have created programs for students without disabilities who are suspended long term or expelled. These programs are most typically available in the larger school districts that have sufficient numbers of students suspended or expelled to warrant offering this type of program. Participation typically is voluntary and depends on the initiative of students and parents.

Specialized Special Education Programs

Many school districts have self-contained special education programs, some within schools and others located in separate facilities. Districts that do not have their own programs access these types of programs through contracted arrangements. In either case, the intent is to provide students with more intense and structured pro-

grams than can be provided in less self-contained settings. In contrast to the first two programs discussed, student participation typically is determined through the special education placement process.

Other Options for Creating Interim Alternative Educational Settings

While each of these programs may hold a potential role in the creation of an interim alternative educational setting, we can envision a much more individualized approach. One option would be to simply organize a set of resources and activities for a particular student that addresses that student's needs. For a secondary school student, this might include some combination of the following:

1. Academic instruction provided by a visiting teacher in a site such as a library or public building.
2. Assignment of an adult mentor to meet with the student and to supervise the student on a variety of out-of-school field trips.
3. Assignment to a work experience site in the community, with an on-site adult supervisor and a school staff member who supervises the overall work experience setting.
4. Participation in a therapy group.

The approach we have described may be useful for small schools and districts where existing alternative programs may not be available, and where the small number of students needing these settings might permit the creation of individualized settings.

Changes in Placement

Since the IEP team usually is responsible for creating an interim alternative educational setting for a student with a disability, the team may choose to make a permanent change of placement to a

more restrictive setting—one that presumably is out of the building—that otherwise meets the student's needs. This could preempt the need for an interim alternative educational setting altogether. However, that action would be subject to the due process procedures and appeals that typically apply to these decisions (and do not apply to placing students in interim alternative educational settings under the two situations described in the law). To date, we have no knowledge of whether or how often this might occur.

Although changes in student placement may be made in lieu of using interim alternative educational settings, there is no available information about such changes. Moreover, unless the IEP team uses some justifiable criteria for such a change in placement, it is doubtful that their decision would stand up to a hearing or court test. For example, some experts (Schloss & Sedlak, 1986) have advocated that the criteria for consideration of a more restrictive placement include the following:

- Student falls below the expected rate of progress for 75% of his or her goals.
- Student falls below social adjustment/management goals to the extent that his or her behavior consistently disrupts the learning environment of others.
- Resources for carrying out an effective educational program in the present setting are not available.
- Three or more systematic attempts to enhance performance through a change in the educational program have been unsuccessful. (p. 57)

While such criteria may apply in some cases in which students with disabilities have engaged in behavior that triggers expulsion, it is also true that for many students with disabilities a change of placement by the traditional criteria listed above may not be warranted. In the behavioral realm, additional questions that can be posed when a more restrictive setting is under review (Smith, 1995) include the following:

- What exactly has been provided in the current setting to meet the special educational needs of the student?

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- What has been the impact of such interventions on this student's behavior?
 - What, if anything, has been the impact of this student's behavior on his or her peers?
 - What are the interventions needed for this student that necessitate this more restrictive setting?
 - What are the supports and related services required for this student?
 - Why can't these services be provided within the current setting?
 - Is there a need for more specifically trained personnel to meet the needs of this student?
 - What behaviors will this student need to display or change in order to return to the general education setting?
 - What schedule will be followed in reviewing the appropriateness of this proposed placement?

Other Issues

4

Developing Case Law on Interim Settings

To date, there have been relatively few court cases that have addressed the legal issues in implementing the concept of interim alternative educational settings (Smith, 2000). Although there have been more due process hearings that have dealt with this issue, records of these proceedings are rare (Smith, 2000; Yell, Rozalski, & Drasgow, 2001). A recent study (Yell et al., 2001) identified 18 state-level due process hearings involving issues related to interim alternative educational settings. In 11 (61%), the hearing officer ruled in favor of the parents and against the school district, with the school district prevailing in the remaining cases. Another study (Smith, 2000) identified 12 proceedings, including the one court case. While the student behaviors in these cases were fairly evenly divided among the three categories in the law (i.e., weapons, drugs, perceived dangerousness), the schools' proposed placements in interim settings were supported in only four of the cases; in the others, the families prevailed.

In both of these studies, the challenges to interim settings focused on the question of program quality, typically because they failed to provide for special education and related services adequately enough for the students to make progress on their IEPs or because there was inadequate planning to address the students' behavior while in the alternative settings. Not surprisingly, Yell and colleagues (2001) asserted that the question of quality of the special

education services will likely be the Achilles heel of many school districts' IAES placements. It appears that, at a basic level, schools must ensure that they plan adequate quality around the three criteria established in the law (i.e., general education curriculum, progress toward IEP goals, behavioral interventions designed to change the student behaviors of concern).

While these criteria were the major issue in many of the cases, schools must attend to the *process* related to the creation of these settings as well. Schools must inform parents of the nature and purpose of IEP team meetings to decide on interim settings and must invite parents to participate. Failure to address the notice requirement can undermine the character of these settings, even if they meet the other criteria in the law (Smith, 2000). Schools must also adequately provide the other elements of the requirements related to IDEA '97 school discipline, such as functional behavioral assessments, individual behavior plans, and manifestation determination, before an interim alternative educational setting will be supported. Otherwise, the placement in an interim setting will not be upheld. Overall, available data indicate that school personnel must pay careful attention to both the process requirements of the law and the substantive criteria the law applies to the creation of interim alternative educational settings, if these procedures and settings are to be upheld in court or in hearings.

Lack of Research on Interim Settings

There has been scant research on what schools have done to create interim alternative educational settings. A search of the literature since 1997 revealed no empirical studies dealing with this topic. Furthermore, there is no readily available information about the number of times these settings were used for special education students, let alone a description of the interim settings that have been employed for students with disabilities. Finally, there are no data on the length of time students spend in these settings or on how the settings are created by the IEP team.

From a different perspective, there appears to have been no outcome research that attempted to identify the effects of the interim alternative settings stemming from IDEA '97. While not necessarily designed as an intervention, one purpose of these settings was to provide an opportunity for school personnel to rethink a student's placement, perhaps to modify the placement, or to increase the intensity or structure of the current placement (Project FORUM, 1998). Although the U.S. Department of Education recently funded studies of alternative settings for special education students, we are not aware of any published studies providing data or analyses of the changes in individual student IEPs or programs that occur after an interim alternative educational setting has been employed.

Research on Alternative Settings Generally

Despite the numerous alternative programs throughout the United States, Kallmayer (1995), as cited in Romshek (2000), reported that a "significant percentage of alternative schools are alternative in name only. These spurious alternatives are representative of ineffective and often punitive approaches that isolate and segregate students who can be difficult from the mainstream" (Kallmayer, 1995, p. 2). Historically, educators have established alternative schools or programs for students who are chronic truants, teenage mothers, or students with learning difficulties (Wren, 1995). Others have identified alternative schools for court adjudicated youth, advanced placement students, arts and technical pupils, and more (Koetke, 1999). Still others, such as charter schools, are responding to efforts to improve student academic outcomes or other targeted outcomes (Lockwood, 2000).

Although schools have employed various types of alternative programming for a long time, there is little evidence to suggest which types of clients are most likely to benefit from alternative placements or which type of program organization is most effective in producing particular student outcomes. The research is weak; little

information exists on the nature or effectiveness of these programs or about what elements make them effective. A variety of assertions have been made about the quality indicators in an alternative program, but those also may depend on the specific nature of the program in question as well as the target students involved.

Although it is beyond the purposes of our discussion to critically examine all programs, there is some information on important program components. For example, Tobin and Sprague (2001) have made the following recommendations for any alternative educational strategy or program:

- Low ratio of students to teachers.
- Highly structured classroom: "one in which expectations, rules and schedules are clearly defined, specified, explained, and enforced" (Tobin & Sprague, 2001).
- Positive rather than punitive emphasis in behavior management.
- Adult mentors at school.
- Individualized behavioral interventions based on functional behavioral assessment.
- Social skills instruction.
- High-quality academic instruction.
- Parent involvement.

One alternative program for students who have been suspended or expelled from school for serious offenses, the Student Offender Program (STOP), in Des Moines, Iowa (Des Moines Public Schools, 1996), has identified the following necessary program elements:

- Individualized academic instruction.
- Daily group social skills instruction.
- A structured behavior management system.

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- A comprehensive after hours program. (This includes daily study sessions, tutoring, vocational preparation, individual and group counseling, life skills instruction, recreational skills instruction, and socialization activities.)
 - Family casework services.
 - Formal clinical screening and assessment.
 - Interagency planning and review. Individual case planning occurs at least every 2 weeks, and an interagency program review team meets on monthly basis.

While these standards seem reasonable, we know little about the degree to which they are implemented in any alternative programs (let alone ones for disciplined students), or whether students return successfully to their schools after completing the programs, or complete their education (whether in a traditional or an alternative environment).

In further examining program elements, Raywid (1990), as described in Romshek (2000), has developed a classification system for alternative education programs across a range from "humanistic" to "punitive." The first type, alternatives created for humanistic purposes, are differentiated from others according to such dimensions as a willingness to accommodate learning needs, styles, and interests and high degree of parental involvement. These programs are small and likely to focus on the whole student, with teachers serving as counselors and mentors. The second type of program is designed to isolate and segregate students who do not fit into traditional school programs and often requires students to attend as an alternative to expulsion, thus serving to correct behavior. The third type of program is intended to provide therapy, with the assumption being that the student must change to better adapt to the school rather than having the school adapt to the student. Both academic intervention and other behavioral therapy are emphasized within this third program model (Romshek, 2000). As Gregg (1998) aptly suggested, in looking at such programs we are challenged to discern

whether they educate, discipline, or heal. As specified in IDEA '97 and described by Raywid (1990), interim alternative educational settings for students with disabilities are intended to be a combination of the latter two types of programs. However, until we develop a stronger empirical basis, we can only speculate on how well these elements are being provided in such settings.

Our concern, and that voiced by others regarding the dearth of research on interim alternative settings, mirrors concerns regarding alternative education. That is, there does not appear to be an adequate database on programs and student outcomes. The bulk of the published literature consists of narrative reports or specific program evaluations (Romshek, 2000). Consequently, it is difficult to draw any definitive conclusions. More research is desperately needed to identify the impact of these programs and to document the impact of the interim settings created under IDEA '97. Bear (1999) identified common characteristics of successful alternative settings, such as small class size, physical location of the facility and within the facility, voluntary participation, student-centered curriculum, flexibility, mission-driven focus, access to social services, and use of technology. Bear concluded:

Given that many alternative schools and IAESs [interim alternative educational settings] serve similar populations, it is likely that future research will find many of the above characteristics to be associated with effective IAESs. However the extent to which alternative education programs, including interim ones, employ interventions of demonstrated effectiveness will likely have the greatest impact on program success. Many of the above characteristics (e.g., small size, voluntary participation, participation in decision making) may foster successful implementation of interventions, but they do not ensure that the interventions selected are ones of demonstrated effectiveness, nor that the interventions are implemented with integrity. (p. 23)

We should point out that prior to IDEA '97 at least some observers expressed interest in the involvement of special education students in other varying alternative education programs (e.g., Gorney & Ysseldyke, 1992), and found that most such participants were students with behavioral disorders, often subsequently "abandoned" by

their home schools. Questions were raised as to whether these programs were truly meeting the needs of these students. Others have focused specifically on students with emotional or behavioral disorders (E/BD) and voiced their consternation over the lack of research on the impact of such programs on student outcomes (Mesinger, 1986). While these studies were conducted well before the current focus on alternative programs, this may be an ominous sign regarding the potential impact alternative education programs generally have on students who have E/BD.

Funding of Interim Alternative Settings

As a final issue, there is scant data on how interim alternative educational settings are being funded. While presumably local, state, and federal special education funds can all be used to fund these programs, at present there are no easy ways to determine the costs of these programs or to compare costs across states, regions, or the country. It seems likely that the costs of any programs that are considered exemplary in this area (Bear, 1999) would exceed the program costs associated with typical special education programs. As many of our administrative colleagues would attest, unless we can adequately address the issue of funding, the uniform provision of quality programs will simply not occur.

Conclusion

5

Although it has been several years since the passage of IDEA '97, much is unknown about interim alternative educational settings as implemented across our country. We suspect that even greater pressure will be created to consider such options—in either general or special education—as pressure mounts on communities and school leaders to afford students both high-performing and safe school settings. Similar tension may lead others to assert that more students with disabilities should be excluded from schools if they engage in unacceptable behaviors similar to students enrolled in general education. As professionals, we must dedicate ourselves to otherwise successfully serving all students—including students with E/BD.

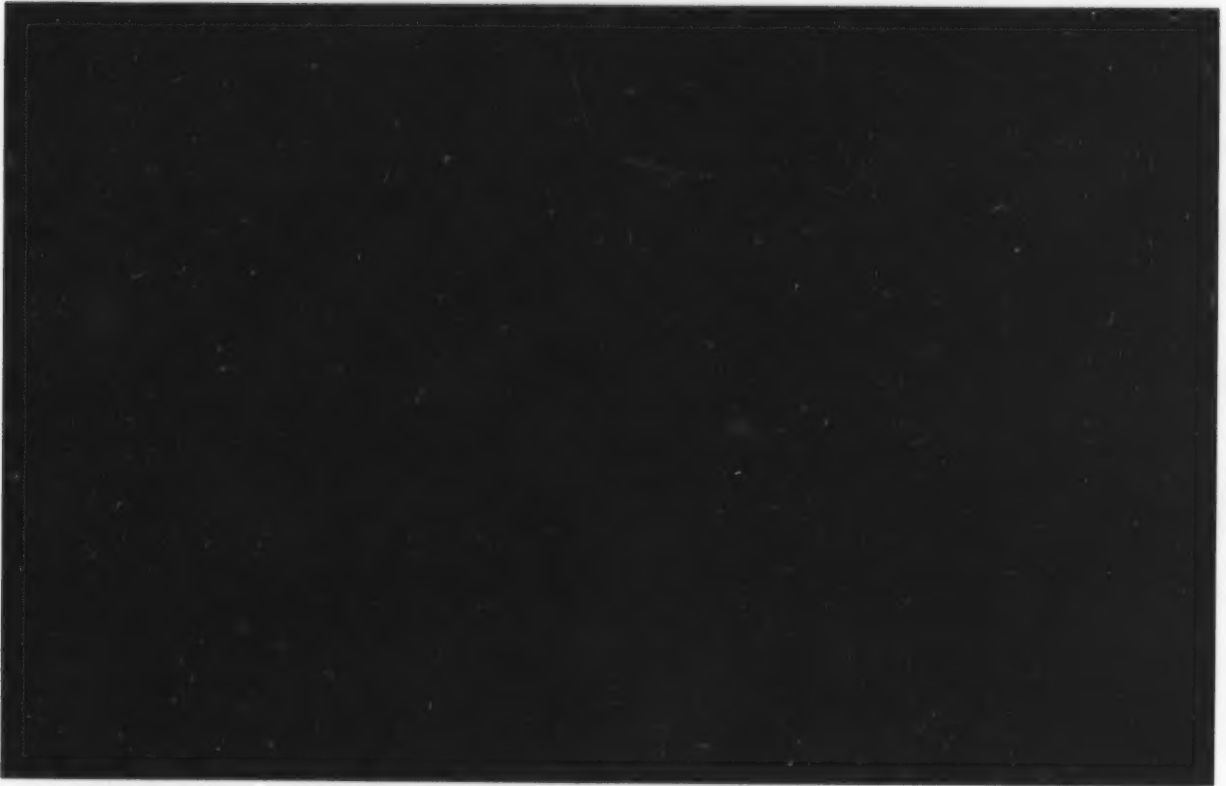
As we consider the use of alternative settings or even special class options for students with disabilities displaying unacceptable behaviors in school and advocate for such options, it seems critical that we address the components of such programs that are required to deliver acceptable student outcomes. We must do this to justify the extent of isolation typically associated with such options. Not to do so would seem counter to any commitment to provide specialized and individualized programs for students who require such programs to become productive citizens.

IDEA '97 initially provided a framework for developing interim alternative program options in dealing with serious behavioral situations involving students with disabilities. The extent to which such options are of service to our communities and students with significant social, emotional, and behavioral needs is yet to be known.

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